

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 00-0433 CSET
CONTROLLED SUBSTANCE EXCISE TAX
FOR TAX PERIODS: 2000

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ISSUE

1. CONTROLLED SUBSTANCE EXCISE TAX: IMPOSITION

Authority: IC 6-7-3-5, IC 6-8.1-5-1(b).

Taxpayer protests the assessment of Controlled Substance Excise Tax.

Statement of Facts

Taxpayer was arrested for possession of marijuana. The Indiana Department of Revenue issued a Record of Jeopardy Finding, Jeopardy Assessment Notice and Demand on October 17, 2000, in a base tax amount of \$4228.14. Taxpayer filed a protest to the assessment. A hearing on the protest was held by telephone on January 25, 2001. Further facts will be provided as necessary.

Controlled Substance Excise Tax-Imposition

Discussion

IC 6-7-3-5 imposes the Controlled Substance Excise Tax on the possession of marijuana in the State of Indiana. Taxpayer bears the burden of proving that the assessment of tax is incorrect. IC 6-8.1-5-1(b). During a flyover, officers in an Indiana State Police helicopter saw several plants of marijuana with two men standing nearby. After landing, the officers saw twenty-nine marijuana plants. Eighteen plants were in black plastic pots and eleven had been planted in the ground. There was a foot path and a vehicle path from the marijuana patch to Taxpayer's yard. After obtaining a search warrant, the officers found a grow operation indoors, marijuana and marijuana smoking equipment in Taxpayer's bedroom and marijuana in Taxpayer's automobile. Taxpayer argues that he did not possess the marijuana because he did not own the house, and he wasn't charged criminally for possession of the marijuana and he is disabled.

The evidence indicates that the house belonged to Taxpayer's brother who was living in California at the time. Taxpayer had occupied the house for several months and allowed another person to live there with him. This indicates that Taxpayer was in control of the property at the time of the arrest. The marijuana was clearly linked with Taxpayer since it was found in his bedroom, in his car and at the end of a path from the yard. At hearing, Taxpayer did not sustain his burden of proving that the assessment was incorrect.

Finding

Taxpayer's protest is denied.